IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.242 OF 1989

The State of Maharashtra)
through the Spl. L.A.)
Officer, Panvel)
(Original Opponent)) ...Appellant.

V/s

Shri Abbas Miya Saheb,)
(since deceased))
by his heir:-)
Smt. Abidabi Abbas M.Khatik)
Through Power of Attorney:-)
Hanitf H. Tade.)
(Original Claimant)) ...Respondent.

Mr. K.K. Tated, AGP for the appellant - State.

None for the respondent.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 23rd September, 2005

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Though this appeal was tagged with the First Appeal No. 238 of 1989, since the facts in the present case are slightly different, the same is being heard and disposed of separately.

2. The appellant - State of Maharashtra is challenging the judgment and order passed by the Civil Judge, Senior Division, Alibag in Land Acquisition Reference No. 10 of 1985 whereby the Reference Court had directed the State to pay the amount of Rs

43,337.89 to the claimant with interest @ Rs 9% per annum on the amount of Rs 49,956.25 from the date of the order till realization of the amount along with costs.

3. Though the respondent was served after the appeal was admitted, none appears on behalf of the respondent. The short point which is raised by the learned Counsel appearing on behalf of the appellant is that, though, no claim was made by the claimant after notice under section 9(3)(4) was served and the Special Land Acquisition Officer had granted compensation @ Rs 6.50/- per sq. meter, the claimant had claimed enhanced compensation @ Rs 12.00 in the Reference Court and had admitted the fact of not filing reply to the notice under section 9(3)(4) of the The Land Acquisition Act, 1894 (herinafter called "the Acquisition Act") in his Written Statement. He submitted that if the claimant had not filed reply to the notice under section 9(3)(4) of the Acquisition Act, then, in that case, the claimant would be entitled, at the most, to claim compensation under the unamended section 25(2) of the Acquisition Act which stipulated that the amount awarded by the Court would, in no case, exceed the amount awarded by the Collector. In support of the said submission, he

relied on the Division Bench Judgment in the case of State of Maharashtra vs. Dhanaji Kamalu Joshi in First Appeal No.430 of 1993 decided on 25/08/2005 and 01/09/2005.

4. This Court in an identical case had an occasion to consider the same question involved in this case and the Division Bench of this Court in the case of Dhanaji Kamalu Joshi (supra) has held that the provisions of the unamended section 25(2) of the Acquisition Act would be attracted in cases where no reply had been filed to the notice which was served on the claimant under section 9(3)(4) of the Acquisition Act. The ratio of the said judgment would be squarely applicable to the facts of the present case and in view of this First Appeal No. 242 of 1989 filed by the State will have to be allowed.

5. Accordingly First Appeal No.242 of 1989 is allowed. The judgment and award passed by the Reference Court in LAR No.10 of 1985 is quashed and set aside and the amount of compensation which is granted to the claimant is reduced to the amount which was granted by the Collector which is @ Rs 6.50 per. sq. meter. The other benefits which the claimant is entitled to, shall be calculated accordingly on the

amount which is so reduced by the judgement and order of this Court. The excess amount, if any, paid to the claimant shall be refunded within a period of 12 weeks from today with interest @ 6% per annum.

6. First Appeal No.242 of 1989 is disposed of in the above terms.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)